

COMP

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**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEVADA**

In re:) Adversary No.

JILL WHITTLE)

Debtor.)

JILL WHITTLE, an Individual)

Plaintiff)

v.)

GMAC BANK, a Foreign Corporation; GRIFFIN)
GROUP, LLC, a Nevada Corporation; APPLE)
BLOSSOM ARBITRAGE, LLC, a Foreign)
Corporation; DOES and ROES 1-10)

Defendants)

**COMPLAINT FOR DAMAGES, INJUNCTIVE RELIEF, QUIET TITLE AND
SANCTIONS**

COMES NOW Debtor/Plaintiff JILL WHITTLE, by and through her counsel of record
JONATHAN B. GOLDSMITH, ESQ., of the law firm ROSENFELD & RINATO, and
hereby files hereby files her Complaint for Damages, Injunctive Relief, Quiet Title and
Sanctions.

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PARTIES

1. Plaintiff Jill Whittle is a resident of the State of Nevada, County of Clark.

2. Upon information and belief, GMAC Bank is a foreign corporation operating and doing business in the State of Nevada, County of Clark.

3. Upon information and belief, Griffin Group is a Nevada corporation operating and doing business in the State of Nevada, County of Clark.

4. Upon information and belief, Apple Blossom Arbitrage is a foreign corporation operating and doing business in the State of Nevada, County of Clark.

JURISDICTION

5. The Court has jurisdiction over the matter because it is a core proceeding under 28 U.S.C. § 1334 and 28 U.S.C. §§ 157.

6. This adversary proceeding relates to a bankruptcy case entitled *In re Whittle*, Case No. BK-S-10-30897-BAM, which is a pending Chapter 13 Case in the United States Bankruptcy Court, District of Nevada.

7. Venue for this matter is proper pursuant to 28 U.S.C. § 1409.

8. Plaintiff asks this Court to order injunctive relief and sanctions under 11 U.S.C. § 105(a) and under the inherent equitable authority of the Court.

STATEMENT OF FACTS

1. Debtor filed a Voluntary Petition for protection under the bankruptcy code on or around November 1, 2010.

2. An illegal and improperly noticed foreclosure sale took place on the Debtor's residence, located at 646 Paloma Drive, Boulder City, Nevada 89005 (APN: #186-10-117-016) ("Property"), on or around October 25, 2010.

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1 3. Specifically, after a Notice of Foreclosure Sale was recorded and served on
2 Debtor on or around September 25, 2010, Debtor was contacted by GMAC bank (“Bank”),
3 the previous Trustee of the Property in October 2010, and Debtor was informed that the Bank
4 was not moving forward with the October 25, 2010 foreclosure date.

5 4. Instead, Debtor was specifically informed on several occasions in October 2010
6 that the foreclosure sale was off calendar and that the Bank was considering Debtor for a
7 loan modification.

8 5. Specifically, on or around October 20, 2010, Debtor spoke to the Bank’s
9 representatives, named “Caesar” and “Kevin”, both in separate phone calls, where Debtor
10 was informed that the foreclosure sale would not take place.

11 6. On or around October 22, 2010, the Bank sent a letter to Debtor informing her
12 that they were in reviewing her home loan modification.

13 7. Then, on or around October 26, 2010, one day after the foreclosure sale, the
14 Bank sent a letter to Debtor informing her that the loan modification review had failed
15 because a foreclosure sale will be held.

16 8. In fact, Debtor submitted several documents necessary for loan modification, at
17 the Banks request, during October 2010, after being informed that the foreclosure sale was
18 off calendar and that Debtor’s loan modification was moving forward.

19 9. Nevertheless, the foreclosure sale on the Property took place on or around
20 October 25, 2010.

21 10. On or around November 5, 2010, after the time Debtor filed her Petition, and
22 after the time Defendant Apple Blossom Arbitrage received notice of the filing of the
23 bankruptcy Petition, Defendant Apple Blossom Arbitrage was issued and recorded a deed on
24 Debtor’s property.
25

1 11. Defendant Apple Blossom Arbitrage, by and through its agent “Griffin Corp”
2 committed several violations of the automatic stay.

3 12. Defendant Apple Blossom Arbitrage was informed by facsimile on around
4 November 1, 2010 that Debtor had filed for bankruptcy protection.

5 13. Nevertheless, on or around November 10, 2010, the Chief Executive Officer of
6 Griffin Group, Benjamin James Blakeley, contacted Debtor by phone and informed her that
7 he would initiate eviction proceedings against Debtor.

8 14. Also, on or around November 17, 2010, the Boulder City Constable, at the
9 request of Griffin Group, posted a 30-day Notice to Quit the premises.

10 15. After receiving the eviction notice, Debtor again contacted Griffin Group, on or
11 around November 17, 2010, by facsimile and telephone, to inform Griffin Group of the
12 bankruptcy filing for a second time.

13 16. Nevertheless, on or around November 19, 2010, attorney Edgar C. Smith, Esq.
14 signed and served a Three-Day Notice to Quit the premises on Debtor.

15 17. On or around November 23, 2010, for the third time, Debtor gave notice to
16 Defendant Apple Blossom Arbitrage of the bankruptcy filing and instructed Defendant Apple
17 Blossom Arbitrage that their continued attempts at eviction were in violation of the
18 automatic stay.

19 18. Debtor maintains possession of the property and asserts that the foreclosure sale
20 and subsequent transfer of the property were illegal and fraudulent.

21 19. Additionally, Debtor asserts that Defendant Apple Blossom Arbitrage has
22 violated the automatic stay on several occasions as discussed above, and is therefore subject
23 to Court sanctions.

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FIRST COUNT
(Fraud)

20. Plaintiff repeats and re-alleges all allegations contained previously as though fully set forth herein.

21. A foreclosure sale and subsequent transfer took place all without proper notice and without Debtor's knowledge.

22. Debtor was informed on several occasions by Defendant GMAC Bank that the foreclosure sale had been taken off the calendar and would not proceed.

23. Based on Debtor's reliance on the multiple representations made by the Bank, Debtor began submitted loan modification documents to the Bank.

24. Nevertheless, a foreclosure sale took place on the date the Bank represented had been cancelled. As a result, Defendant Apple Blossom Arbitrage received and recorded a deed on November 5, 2010, five days after Debtor filed for bankruptcy protection.

25. Although the Notice of Breach and Notice of Sale were recorded pre-petition, the Bank, by means of fraudulent representation, informed Debtor on several occasions that the foreclosure sale would not take place.

26. Debtor had justifiable reliance to not file for bankruptcy protection prior to the scheduled foreclosure sale based on the Bank's representations.

27. As a result, Debtor filed for bankruptcy protection after the scheduled foreclosure sale, but before the recordation of Defendant Apple Blossom Arbitrage's deed.

28. As a result, Plaintiff is entitled to damages against Defendant, and each of them, in an amount to be determined.

29. Defendants abused the bankruptcy process and their conduct and practices are sanctionable under 11 U.S.C. § 105(a).

1 30. As a result of Defendants' conduct, Plaintiff was required to hire an
2 attorney for the prosecution of this matter and is therefore entitled to reasonable
3 attorneys fees.

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5 SECOND COUNT
6 (Violation of 11 U.S.C. 362)

7 31. Plaintiff repeats and re-alleges all allegations contained previously as though
8 fully set forth herein.

9 32. Defendant Apple Blossom Arbitrage was noticed of the bankruptcy filing on
10 November 1, 2010, again on November 17, 2010, and a third time on November 23, 2010.

11 33. Nevertheless, on or around November 10, 2010, the Chief Executive Officer of
12 Griffin Group, Benjamin James Blakeley, contacted Debtor by phone and informed her that
13 he would initiate eviction proceedings against Debtor.

14 34. Also, on or around November 17, 2010, the Boulder City Constable, at the
15 request of Griffin Group, posted a 30-day Notice to Quit the premises.

16 35. After receiving the eviction notice, Debtor again contacted Griffin Group, on or
17 around November 17, 2010, by facsimile and telephone, to inform Griffin Group of the
18 bankruptcy filing for a second time.

19 36. Nevertheless, on or around November 19, 2010, attorney Edgar C. Smith, Esq.
20 signed and served a Three-Day Notice to Quit the premises on Debtor.

21 37. On or around November 23, 2010, for the third time, Debtor gave notice to
22 Defendant Apple Blossom Arbitrage of the bankruptcy filing and instructed Defendant
23 Apple Blossom Arbitrage that their continued attempts at eviction were in violation of the
24 automatic stay.

25 38. Defendants abused the bankruptcy process and their conduct and practices
are sanctionable under 11 U.S.C. § 105(a).

1 39. As a result of Defendants' conduct, Plaintiff was required to hire an
2 attorney for the prosecution of this matter and is therefore entitled to reasonable
3 attorneys fees.

4 THIRD COUNT
5 (Improper Acceptance of Property of the Bankruptcy Estate)

6 40. Plaintiff repeats and re-alleges all allegations contained previously as though
7 fully set forth herein.

8 41. Defendant Apple Blossom Arbitrage received and recorded a deed on
9 November 5, 2010, which was five days after Debtor filed for bankruptcy protection.

10 42. Defendant has argued during the bankruptcy proceeding that the Property is not
11 the property of the bankruptcy estate.

12 43. However, at the time of filing of bankruptcy, on November 1, 2010, Debtor was
13 still the legal owner of the property as no deed had been recorded to the contrary.

14 44. Nevertheless, and after being on notice of the filing of bankruptcy, Defendant
15 Apple Blossom recorded a deed from Defendant GMAC Bank transferring ownership in
16 property that was property of the bankruptcy estate.

17 45. As a result, Plaintiff is entitled to damages against Defendant, and each of them,
18 in an amount to be determined.

19 46. Defendants abused the bankruptcy process and their conduct and practices
20 are sanctionable under 11 U.S.C. § 105(a).

21 47. As a result of Defendants' conduct, Plaintiff was required to hire an
22 attorney for the prosecution of this matter and is therefore entitled to reasonable
23 attorneys fees.

24 FOURTH COUNT
25 (Civil Conspiracy)

48. Plaintiff repeats and re-alleges all allegations contained previously as though
fully set forth herein.

1 49. Defendant Apple Blossom Arbitrage received and recorded a deed on
2 November 5, 2010, which was five days after Debtor filed for bankruptcy protection.

3 50. A foreclosure sale and subsequent transfer took place all without proper notice
4 and without Debtor's knowledge.

5 51. Debtor was informed on several occasions by Defendant GMAC Bank that the
6 foreclosure sale had been taken off the calendar and would not proceed.

7 52. Based on Debtor's reliance on the multiple representations made by the Bank,
8 Debtor began submitted loan modification documents to the Bank.

9 53. Nevertheless, a foreclosure sale took place on the date the Bank represented had
10 been cancelled. As a result, Defendant Apple Blossom Arbitrage received and recorded a
11 deed on November 5, 2010, five days after Debtor filed for bankruptcy protection.

12 54. Although the Notice of Breach and Notice of Sale were recorded pre-petition,
13 the Bank, by means of fraudulent representation, informed Debtor on several occasions that
14 the foreclosure sale would not take place.

15 55. Debtor had justifiable reliance to not file for bankruptcy protection prior to the
16 scheduled foreclosure sale based on the Bank's representations.

17 56. Defendants, and each of them, conspired to fraudulently foreclose and transfer
18 title of the property in question without giving Plaintiff the opportunity to file for bankruptcy
19 protection.

20 57. As a result, Plaintiff is entitled to damages against Defendant, and each of them,
21 in an amount to be determined.

22 58. Defendants abused the bankruptcy process and their conduct and practices
23 are sanctionable under 11 U.S.C. § 105(a).
24
25

1 59. As a result of Defendants' conduct, Plaintiff was required to hire an
2 attorney for the prosecution of this matter and is therefore entitled to reasonable
3 attorneys fees.

4 FIFTH COUNT
5 (Quiet Title under NRS 40.010)

6 60. Plaintiff repeats and re-alleges all allegations contained previously as though
7 fully set forth herein.

8 61. A foreclosure sale and subsequent transfer took place all without proper notice
9 and without Debtor's knowledge.

10 62. Defendant Apple Blossom Arbitrage recorded a deed claiming ownership five
11 days after Plaintiff filed for bankruptcy protection.

12 63. Plaintiff brings this action against Defendants claiming interest in real property
13 adverse to Plaintiff, for the purpose of determining such adverse claim pursuant to NRS
14 40.010.

15 64. As a result of Defendants' conduct, Plaintiff was required to hire an
16 attorney for the prosecution of this matter and is therefore entitled to reasonable
17 attorneys fees.

18 SIXTH COUNT
19 (Injunctive Relief)

20 65. Plaintiff repeats and re-alleges all allegations contained previously as though
21 fully set forth herein.

22 66. A foreclosure sale and subsequent transfer took place all without proper notice
23 and without Debtor's knowledge.

24 67. Defendant Apple Blossom Arbitrage recorded a deed claiming ownership five
25 days after Plaintiff filed for bankruptcy protection.

1 68. Defendant Apple Blossom Arbitrage should be enjoined from exercising its
2 alleged rights of possession over the property due to the fraudulent sale and subsequent
3 transfer.

4 69. Defendant Griffin Group should be enjoined from pursuing any attempts at
5 gaining possession of the property in contravention with the bankruptcy code and due to the
6 fraudulent sale and subsequent transfer.

7 70. Defendant GMAC Bank should be enjoined from any attempts at collection of
8 alleged deficiency due to the fraudulent sale and subsequent transfer.

9 71. As a result of Defendants' conduct, Plaintiff was required to hire an
10 attorney for the prosecution of this matter and is therefore entitled to reasonable
11 attorneys fees.

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1 WHEREFORE, Plaintiff prays for relief against each Defendant as follows:

- 2 1. For general and compensatory damages for Counts I through IV against each
- 3 Defendant as alleged in the Complaint;
- 4 2. For sanctions under 11 U.S.C 105(a) for Counts I through IV against each
- 5 Defendant as alleged in the Complaint;
- 6 3. For an Order determining title of the property under NRS 140.010 for Count V
- 7 as alleged in the Complaint;
- 8 4. For injunctive relief for Count VI against each Defendant as alleged in the
- 9 Complaint;
- 10 5. For reasonable attorneys fees against each Defendant as alleged in the
- 11 Complaint; and
- 12 6. For any other relief that the Court deems just and proper.

13 Dated this 2nd day of February, 2011.

14 /s/ Jonathan B. Goldsmith, Esq.
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